

Resolution No.: 16-423
Introduced: January 15, 2008
Adopted: January 15, 2008

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION
OF THE MARYLAND-WASHINGTON REGIONAL DISTRICT
IN MONTGOMERY COUNTY**

By: County Council

SUBJECT: APPLICATION NO. G-870 FOR AMENDMENT TO THE ZONING ORDINANCE MAP, Maryland-National Capital Park and Planning Commission, OPINION AND RESOLUTION ON APPLICATION Tax Account Nos. 00392992 and 02802695

OPINION

Local Map Amendment (LMA) Application No. G-870, filed on September 14, 2007, by Applicant Maryland-National Capital Park and Planning Commission (M-NCPPC), requests reclassification from the O-M Zone (Office building, moderate intensity) to the C-1 Zone (Convenience Commercial) of split-zoned property known as Parcels P490 and N536, at 14120 Darnestown Road, Darnestown, Maryland. The property to be rezoned is about 1.98 acres (1.65 acres in Parcel P490 plus 0.33 acres in part of Parcel N536, the remainder of which is already in the C-1 Zone). The site is located in an area subject to the *Potomac Subregion Master Plan*. It is owned by Nicholas and Vanda Petruccelli, and has the Tax Account Numbers 00392992 and 02802695. The owners support the application, as does the Darnestown Civic Association. There is no opposition.

This application seeks to reclassify from a floating zone (O-M) to a Euclidean Zone (C-1), which is the reverse of the typical rezoning case.¹ Also unlike most cases, this application was filed by a government agency, the Maryland-National Capital Park and Planning Commission, not by a private party.

¹ Zoning involves two basic types of classifications, Euclidean zones and floating zones. A floating zone is a flexible device that allows a legislative body to establish a district for a particular type of use, with land use regulations specific to that use, without attaching that district to particular pieces of property. The term "Euclidean" zoning arose from the seminal United States

In the State of Maryland, an applicant seeking to reclassify property from one Euclidean zone to another bears a heavy burden to prove either a substantial change in the zoning neighborhood or a mistake in the previous comprehensive zoning. See *Stratakis v. Beauchamp*, 268 Md. 643, 652-53, 304 A.2d 244, 249 (1973). This doctrine is known as the “change/mistake” rule. Because the Applicant is seeking reclassification to a Euclidean Zone on the subject site, based on an asserted error in the comprehensive zoning, this case is analyzed under the change/mistake formula.²

If the Applicant succeeds in demonstrating change or mistake, the District Council is permitted, but not required, to grant the proposed rezoning. The Applicant must also demonstrate that the requested rezoning is warranted. *White v. Spring*, 109 Md. App. 692, 708-709, 675 A.2d 1023, 1030-1031, *cert den'd*, 684 A.2d 455 (1996).

The application filed in the present case seeks rezoning based on mistake. Thus, the first question presented is whether the District Council committed a “mistake,” as that term is used in zoning law, when it adopted the sectional map amendment (SMA) that left the subject property zoned O-M. In *Boyce v. Sembly*, 25 Md. App. 43, 50-51, 334 A.2d 137, 142 (1975), the court defined the term “mistake.”

[E]rror or mistake is established when there is probative evidence to show that the . . . premises relied upon by the Council . . . were invalid. Error can be established by showing that . . . the Council failed to take into account then existing facts or projects or trends which were reasonably foreseeable of fruition in the future, so that the Council's action was premised initially on a misapprehension.³

Supreme Court case upholding the land use authority of local governments, *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926). Euclidean zoning divides the territory of a local jurisdiction into zoning districts with set boundaries and specific regulations governing aspects of land development such as permitted uses, lot sizes, setbacks, and building height.

² In this unusual case, the application for rezoning does not fit neatly into any category. As noted in *Tauber v. Montgomery County Council*, 244 Md. 332, 336, 223 A.2d 615 (1966), the “change/mistake” analysis does not apply when an applicant is seeking to rezone from a Euclidean Zone to a floating zone. But this application does not seek reclassification to a floating zone. This case also does not involve an effort by a private party to switch from one Euclidean Zone to another Euclidean Zone, which is the typical case in which the “change/mistake” standard has been applied. Instead, the M-NCPPC seeks reclassification from a floating zone to a Euclidean Zone. Nevertheless, the “change/mistake” analysis is the appropriate one here because the Applicant is challenging part of a comprehensive zoning (SMA G--800) on the theory that the Council was mistaken.

³ The court also notes that mistake may also be established by showing that events occurring subsequent to the comprehensive zoning have proven that the Council's initial premises were incorrect.

This same test has been relied on in the subsequent case law. See, e.g., *Howard County v. Dorsey*, 292 Md. 351, 356-57, 438 A.2d 1339 (1982); *People's Counsel for Baltimore County v. Beachwood I Ltd. Partnership*, 107 Md. App. 627, 645, 670 A.2d 484, 493 (1995); and *White, supra*, 109 Md. App. 698.

In *Beachwood*, 107 Md. App. at 645, the court further clarified the concept:

The finding of a mistake or error is not so much concerned with the logical validity or merit of ultimate conclusion-drawing as it is with the adequacy and accuracy of the factual premises that underlie the conclusion-drawing. A conclusion based on a factual predicate that is incomplete or inaccurate may be deemed, in zoning law, a mistake or error; an allegedly aberrant conclusion based on full and accurate information, by contrast, is simply a case of bad judgment, which is immunized from second-guessing.

Thus, mistake is *not* demonstrated by evidence that a zoning authority used bad judgment. The change-mistake doctrine is designed to allow mistakes to be corrected, not to provide individual property owners with the means to second-guess comprehensive zoning decisions.⁴ A rezoning request can be granted based on mistake if strong evidence of error makes the question of mistake fairly debatable (*Dorsey*, 292 Md. at 356), and the requested rezoning is shown to be warranted (*White*, 109 Md. App. at 708-709).

This application sought rezoning based on a mistake in the last comprehensive zoning of the subject site in SMA G-800, which had been intended to implement recommendations in the *Potomac Subregion Master Plan*, approved and adopted April 2002 (Master Plan). The mistake is that the property in question was left in the existing O-M Zone.⁵ The Applicant now seeks to reclassify to C-1 the only part of the overall area that had been classified as O-M, so that the zone will be consistent with the intent of the planners when they drafted the *2002 Potomac Subregion Master Plan*.

⁴ Maryland's highest court "has repeatedly recognized that there is a strong presumption of the correctness of comprehensive rezoning, and that 'strong evidence' of error is required to overcome that presumption." *Dorsey*, 292 Md. at 355; See also, *Beachwood*, 107 Md. App. at 641; and *Boyce*, 25 Md. App. at 49.

⁵ The subject site had been rezoned O-M in 1992 by the Council in LMA G-685 (Resolution 12-556, adopted 2/25/92). Technical Staff and the Planning Board had opposed the owner's application at the time because the O-M Zone was not recommended in the Master Plan, the surrounding area was predominantly residential and comprehensive planning was needed for the entire Darnestown area. That comprehensive planning subsequently resulted in the 2002 Potomac Subregion Master Plan and Sectional Map Amendment G-800.

The zoning application was initiated by the Technical Staff of the Maryland-National Capital Park and Planning Commission (M-NCPPC) who, in a report dated July 9, 2007, recommended approval of the subject rezoning request (Item "C" in the Staff report). The Planning Board considered the application on July 26, 2007 and unanimously recommended approval based on the reasons set forth in the Technical Staff Report.

A public hearing was held on October 26, 2007, and the record closed on November 2, 2007. The Hearing Examiner filed his report on December 12, 2007, and recommended approval of the application on the basis that the Applicant met its burden of demonstrating a mistake in the comprehensive zoning which should be remedied by rezoning the subject site to the C-1 Zone. To avoid unnecessary detail in this Resolution, the Hearing Examiner's Report and Recommendation, dated December 12, 2007 is incorporated herein by reference.

The subject property, 14120 Darnestown Road, Darnestown, Maryland, is a mostly vacant tract, currently improved only with a telecommunications tower disguised as a flagpole. The site was described in the Council's 1992 opinion in LMA G-685:

The subject property is located at the heart of the Darnestown and Vicinity planning area in the western half of Montgomery County and about three miles directly north of the Potomac River. The property is also located about 70 feet west of the intersection of Darnestown and Seneca Roads. The site is an irregularly-shaped parcel that possesses about 365 feet of frontage along Darnestown Road and extends 215 feet in depth along its eastern edge. The property contains sloping topography which drops 22 feet in elevation as it extends from east to west. The western and lower one-third of the site is wooded. . . .

This description is still applicable. The surrounding area was defined by the Council in LMA G-685 as including those uses located within a radius ranging between 800 and 1,000 feet from the site. The District Council adopts the same definition of surrounding area in the current case.

The surrounding area essentially includes the Rural Village Center Overlay Zone and a portion of the neighboring Archdiocese property within a 1,000-foot radius. The Archdiocese property, which is

southwest of the subject site, consists of about 189 acres in the RC Zone. Also within the surrounding area are the Darnestown Village Center, the C-1 zoned uses on the west side of Seneca Road, a gas station on the southeast corner of Darnestown and Seneca Roads in the C-1 Zone, a large grocery store (Harris Teeter), and a storm water management area on the north side of Darnestown Road. It also encompasses RE-2 zoned properties on the east side of Seneca Road and R-200 zoned properties on the north side of Darnestown Road.

The subject site had the following zoning history:

1958

The site was classified for half-acre residential density (R-R Zone) when countywide comprehensive zoning was applied in 1958.

1969-70

LMA Application F-399, filed on June 2, 1969 for reclassification of 0.91 acres from the R-R Zone to the C-1 Zone, included a portion of the property at the intersection of Darnestown Road and Seneca Road. The C-1 zoning request was approved by the District Council on September 22, 1970, for 8,625 square feet, leaving in residential zoning the portion of Lot E which is part of the subject property.

1973

The R-R Zone was renamed the R-200 Zone on October 2, 1973.

1980

All of the subject property was down-zoned to the RC (Rural Cluster) Zone by comprehensive zoning, Sectional Map Amendment G-247, in 1980.

1992

On February 25, 1992, the District Council adopted Resolution No. 12-556 and approved LMA Application No. G-685, reclassifying the subject property (1.9576 acres) from the RC Zone to the O-M Zone.

2002

On October 15, 2002, the District Council adopted Resolution No. 14-1468, approving Sectional Map Amendment G-800 to the Zoning Map and applied the Rural Village Center Overlay Zone to Darnestown Village, including the subject property.

The request to rezone from O-M to C-1 is based on a mistake that was made in the last comprehensive zoning of the subject site in SMA G-800, which had been intended to implement

recommendations in the *Potomac Subregion Master Plan*, approved and adopted April 2002. The mistake is that the property in question was left in the existing O-M Zone, even though the planners sought to recommend its reclassification into the C-1 Zone, consistent with the adjacent property, during development of the Master Plan.

The Darnestown Village area was only one small portion of a very large area reviewed for the revised Master Plan and the comprehensive zoning. In this process, 40,583 acres were reviewed for SMA G-800, and approximately 890 acres were rezoned. The subject site consists of under two acres. Thus, the precise language for the subject site, conveyed from Master Plan draft to Master Plan draft and ultimately into SMA G-800, was not the main focus of attention, as evidenced by the legislative history in the record. The primary concern of the planners for the Darnestown Village area was the imposition of the Rural Village Center Overlay Zone, which would protect the rural village character of the whole Darnestown Village area.

Once the mistake was made in the Master Plan, its inclusion in the SMA G-800 was routine, in the absence of anyone noticing it at the time. While the Council can reverse a decision made during the Master Plan, it has been Council policy to confirm all Master Plan decisions during the SMA unless significant new information has been presented which leads the Council to believe a change is warranted. In this case, all the evidence confirms that no one caught the Master Plan error until after the SMA was approved.

The uncontradicted testimony in this case is to the effect that all interested parties thought the C-1 Zone would result from the new Master Plan and the comprehensive zoning in SMA G-800. This was the testimony of Callum Murray of Technical Staff, who wrote the Technical Staff report for SMA G-800 and has represented M-NCPPC in the present case. As testified by Mr. Murray (Tr. 19):

There was a mistake in inclusion in resolution number 14-1170, and subsequently in the 2002 Potomac Subregion Master Plan of a reference to the O-M zone within a recommendation to establish an overlay zone, which should only pertain to the C-1 zone.

As a consequence, this resulted in a mistake during the comprehensive zoning in SMA G-800 in which the O-M zone was permitted to remain a part of the subject site when the intent was to change it to C-1, subject to the Rural Village Center Overlay Zone.

His testimony was confirmed by Stephen Ellis, who represented the Darnestown Civic Association. According to Mr. Ellis, all involved believed the subject site was going to become C-1 property, because that was what the community, in general, wanted. The community wanted the C-1 Zone to provide convenient retail for the local residents, and because of restrictions on septic capacities in the area, the possibilities for developing in the O-M zone were much more restricted than in the C-1 Zone. Mr. Ellis stated that they thought that everything was running smoothly, because the Planning Board had also approved the elimination of the O-M Zone [during the Master Plan process]. Mr. Ellis suggested that this issue "was basically overlooked by the Council." Tr. 36.

When asked by the Hearing Examiner whether he believed that the Council made a mistake in leaving the O-M Zone, while intending to accomplish the ends set forth by Mr. Ellis, he responded (Tr. 37):

Yes. There was no reason that any Council member would have been against that change as far as I know. Because the community, the property owner, the Planning Board staff and the Planning Board were all in favor of the entire C-1 for the entire overlay zone. We were all in [synch]. It was surprising to us that it didn't happen.

Nicholas Petruccelli, the owner of the subject site, testified on this point too. Mr. Petruccelli was also under the impression that the Council was going to be changing the Zone to C-1, as had been discussed in the Master Plan process. He was surprised to learn later that it had not been done, and he believes the other participants were surprised as well. "We were supposed to be included, you know, in the master plan. . . . So everybody was surprised, I mean, what happened, you know. We thought there was an oversight." Tr. 41.

The mistake in this case is further evidenced by the inherent inconsistency in the language of the Master Plan regarding the O-M Zone. The language in the Master Plan relevant to this case is found at

pages 98-99, where the “Darnestown Village Center” is discussed. In that discussion, the Master Plan observes, in a bullet point, that:

- **The O-M zoning** [which was then, and still is, the existing zone on the subject site] **is inappropriate in this location. Its densities are too high for a rural village and for an area reliant on septic systems.**[p. 98, Emphasis added]

The C-1 Zone is also discussed, with the Master Plan expressing concerns, but not concluding that it was “inappropriate” for the area, as the Plan had characterized the O-M Zone:

Development in the C-1 Zone does not require site plan review or a public hearing and has resulted in patterns that are objectionable to the surrounding community. [p. 98]

To remedy the problem with the C-1 Zone, the Master Plan recommended the establishment of a Rural Village Center Overlay Zone which would limit the uses permitted in the C-1 Zone:

The Rural Village Center Overlay Zone would delete certain C-1 uses considered inappropriate for a rural village. The Overlay Zone would include development standards for green area, location of buildings and parking, building height, and density. [p. 99]

However, when the Master Plan’s analysis was reduced to a bullet point recommendation, the language failed to distinguish between the C-1 and the O-M Zones, stating:

- Use the overlay zone to limit the uses that would otherwise be allowed in the base zones (C-1 and O-M) to those that would be appropriate for a rural village. [p. 99]

This coupling of the C-1 and O-M Zones was carried forward to the subsequent Sectional Map Amendment (G-800), which retained the existing O-M Zone on the subject property to implement what the District Council assumed was a recommendation stated in the *Potomac Subregion Master Plan*. The District Council finds that its intent when it adopted SMA G-800 was to carry out the recommendations of both the planners and the community. Although not realized by the District Council at the time, those recommendations included replacing the O-M Zone with the C-1 Zone at this location. As stated by Mr. Murray:

And the language there was that the permitted uses under the overlay zone would be based on the C-1 uses with adjustments. As far as I can recollect, and I believe as far as the citizens involved in that can recollect, there wasn't one single illusion by any PHED Committee member or Council member to alter that during all of the work sessions on the master plan. [Tr. 26-27.]

Those recommendations did not actually get incorporated into SMA G-800 because ambiguous language mentioning both the C-1 and the O-M Zones in connection with the overlay zone crept into the final versions of the Master Plan (at p. 99 of the Master Plan). This conclusion is buttressed by the fact that an earlier draft of the Master Plan, the Planning Board Draft of September 2001 (p. 97), specifically noted that, in the subject area (which then, as now, included both C-1 and O-M Zones), the permitted uses under the overlay zone "will be based on the C-1 uses with adjustments," not C-1 and O-M uses with adjustments. In fact, it proposed establishing a "C-1 Overlay Zone," not a C-1 and O-M Overlay Zone. Moreover, the Rural Village Center Overlay Zone, subsequently approved by the District Council, specifically prohibited certain land uses generally located in the C-1 Zone, and not those generally located in the O-M Zone. Yet, the Council mistakenly included the O-M reference in its Master Plan recommendation bullet point, and then mistakenly relied upon that bullet point in adopting SMA G-800.

The District Council finds that the O-M Zone is inappropriate for the area, as it was at the time SMA G-800 was adopted. The O-M zone is designed for moderate intensity office buildings outside of central business districts. This site is far away from any central business district. The O-M Zone permits an FAR of 1.5, a building height of seven stories, and a lot coverage of 75 percent, all clearly inappropriate for a rural village. According to the evidence, it is not practical to have an O-M application that is limited to a FAR of 0.2, which is a limit imposed by the Rural Village Center Overlay Zone.

Moreover, wastewater flows for retail uses are usually less than for office uses, with retail requiring about 0.05 gal/day/s.f., and an office building requiring about 0.09 gal/day/s.f. Given the limited septic capacity of the area, an office building would therefore be substantially smaller than a retail building and

would not meet the current demands of the local community. Furthermore, there are numerous retail uses permitted in the C-1 zone that are not permitted in the O-M zone. These include a bookstore, gift shop, garden supply, hardware store, clothing store, dry goods store, and real estate office. The Rural Village Center Overlay Zone was clearly geared to limit land uses generally located in the C-1 zone, and not the O-M Zone.

We now examine whether the record in this case, meets the criteria for rezoning under the “change/mistake” rule. The first question is whether a “mistake” was made, as that term is defined in the case law discussed above. A “mistake” in this context is not an error of judgment by the Council, but rather a showing that “the . . . premises relied upon by the Council . . . were invalid . . . [;] that . . . the Council failed to take into account then existing facts . . . so that the Council's action was premised initially on a misapprehension.” *Boyce, 25 Md. App. at 50-51.*

In this case, the alleged mistake clearly falls within the courts’ definition of that concept. The Council here indisputably relied upon the Master Plan in drafting the challenged SMA G-800. The language in the Master Plan Recommendations (p. 99) inadvertently included a reference to the O-M Zone as a base zone for proposed Overlay Zone. That language was not present in the Planning Board Draft of the Master Plan (p.97), which mentions the O-M Zone as one of the current zones, but specifies that “[t]he permitted uses under the overlay zone will be based on the C-1 uses with adjustments.”

All the evidence indicates that the approach in the Planning Board Draft is what the planners and the community intended for the final Master Plan. Apparently, when the Master Plan draft was edited into its final form, two concepts (*i.e.*, that both the C-1 and O-M Zones existed in the area, and that there would be a base zone for the overlay zone) were combined into one bullet point, with misleading results not intended by the planners.

This error was not caught immediately because it was a small part of a large Master Plan. Discussions of the Darnestown village center after the Planning Board Draft were directed mostly at the

nature of the proposed overlay zone. The final version of the Master Plan was approved by the District Council on March 5, 2002, in Resolution 14-1170. At page 18 of that resolution, the new recommendation bullet points were substituted for the recommendation language in the Planning Board Draft. The new bullet points were more concise, but they misleadingly indicated that both the O-M Zone and the C-1 Zone would be base zones for the intended overlay zone.

In addition to the testimony in this case to the effect that this result was not intended, the Master Plan itself specifies at page 98 that “[t]he O-M Zone is inappropriate for this location. . . .” Thus, the evidence is uncontradicted that the planners did not intend to retain the O-M Zone for this site. Nevertheless, once the ambiguous language crept into the Master Plan, it served as the basis for the subsequent SMA G-800, which left the O-M Zone in place. As stated in the Council Opinion in Resolution No. 14-1468 (p. 1), “The Council finds that Sectional Map Amendment Application G-800 is necessary to implement the land use and development policies expressed in the Approved and Adopted Potomac Subregion Master Plan.”

In this case, all the evidence confirms that no one caught the Master Plan error until after SMA G-800 was approved by the Council in Resolution No. 14-1468 on October 15, 2002. This is not surprising, since the Darnestown Village area was only one small portion of a very large area reviewed for the revised Master Plan and the comprehensive zoning.

In sum, the evidence demonstrates that there was an invalid factual premise regarding the propriety of retaining the O-M Zone at this site and that the Council relied upon it in adopting that portion of SMA G-800 which applied to the Darnestown Village Center area. Thus, the mistake and reliance criteria have been established.

However, as noted above, even though the evidence establishes that a mistake was made and relied upon, a decision to grant the rezoning requested in this application is permitted, not required. The District Council has the responsibility to consider whether the requested rezoning would be warranted (*i.e.*, that it

would be the appropriate remedy for the mistake and would serve the public interest). *See White*, 109 Md. App. at 708-709.

The C-1 Zone is appropriate because this site will satisfy the purpose clause of the zone, as well as its regulations, and will be compatible with surrounding development. The site meets or abuts C-1 property on the east side. It confronts a 40,000 square foot grocery store, Harris Teeter, on the north side of Darnestown Road, and it would extend neighborhood convenience retail for the benefit of the Darnestown subregion. It would also be compatible with planned land uses in the area, including a future 32-unit assisted living facility, and would provide convenience commercial for the future residents of that facility.

Regulations such as building height would be controlled by the Rural Village Center Overlay Zone. For example, the height could not exceed 35 feet; the green area would be 35 percent of the gross tract area; and the density would not be in excess of 0.2 FAR. The District Council finds nothing in the regulations for the C-1 zone, as controlled by the Overlay Zone, which would be in conflict with the site that is subject of this rezoning.⁶

The District council finds that approval of the current application would have the following additional benefits:

- It would resolve an anomalous split zoning on the subject property. (SMA G-800 had already resolved dozens of these in other areas.);
- It would resolve the issue of different development standards on abutting sections of the same property, which make it very difficult for the property owner to do some form of coherent development;
- It would meet the original intent of the Master Plan [to provide convenience commercial facilities for the benefit of the local residents];
- It would offer a property owner a great deal more flexibility in providing additional neighborhood-warranted retail; and
- It would eliminate undue restraints on development caused by the fact that office buildings require almost twice as much sewage capacity per square foot

⁶ It should be noted that the total area of C-1 zoned property in the Darnestown Village area is about 8 acres. If the subject application is granted, the total will be just over 10 acres. It therefore does not exceed the 15 acre maximum specified in Zoning Ordinance §59-C-4.341.

(0.09 gallons per day per square foot) as retail uses (0.05 gallons per day per square foot).

Maryland law also requires that any rezoning be in the public interest. As stated in the State Zoning Enabling Act applicable to Montgomery County, all zoning power must be exercised:

. . . with the purposes of guiding and accomplishing a coordinated, comprehensive, adjusted, and systematic development of the regional district, . . . and [for] the protection and promotion of the health, safety, morals, comfort, and welfare of the inhabitants of the regional district.” [*Regional District Act*, Maryland-National Capital Park and Planning Commission Article (Art. 28), Md. Code Ann., § 7-110].

Factors which may be considered in determining the public interest include Master Plan conformity, the recommendations of the Planning Board and its staff and possible adverse effects on the surrounding area or public facilities. As previously mentioned, the Master Plan recommended the C-1 Zone, with additional limits imposed by an overlay zone. That overlay zone is currently in place under Zoning Ordinance §59-C-18.23. Hence, the C-1 Zone would conform to the Master Plan. Both Technical Staff and the Planning Board recommended approval of this zoning application; in fact, they brought the application themselves. According to Technical Staff, the proposed rezoning would be compatible with the surrounding area and would have no adverse impact on public facilities, schools and transportation or utilities. In fact, commercial trips by local citizens may be reduced in that they would not have to travel to the far north to shop at Quince Orchard and Darnestown Roads.

Based on the foregoing analysis and the Hearing Examiner’s report, which is incorporated herein, and after a thorough review of the entire record, the District Council concludes that a mistake was made when the Council approved that portion of SMA G-800 which left the subject site in the O-M Zone; that the Council’s underlying intent was to carry out the Master Plan goal of supporting the rural village center at this location; that the Master Plan expressly determined that the O-M Zone was inconsistent with that goal; that contrary to the Council’s general intent, it inadvertently allowed the O-M Zone to remain on the


subject site based on the mistaken inclusion of ambiguous language in the Master Plan upon which it relied; that the appropriate remedy would be to grant the instant application to reclassify the site to the C-1 Zone; that the C-1 Zone would be compatible with the surrounding area; and that the requested reclassification to the C-1 Zone bears sufficient relationship to the public interest to justify its approval. For these reasons and because approval of the instant zoning application will aid in the accomplishment of a coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District, the application will be approved in the manner set forth below.

ACTION

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District located in Montgomery County, Maryland approves the following resolution:

Zoning Application No. G-870, requesting reclassification from the O-M Zone to the C-1 Zone of 1.98 acres of split-zoned property known as Parcel P490 and Part of Parcel N536, located at 14120 Darnestown Road, Darnestown, Maryland, be approved in the amount requested in order to correct a mistake made in Sectional Map Amendment G-800.

This is a correct copy of Council action.


Linda M. Lauer, Clerk of the Council